



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2012-0567; FRL-9912-85-Region 5]

Approval and Promulgation of Air Quality Implementation Plans;

Indiana; Indiana PM_{2.5} NSR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of submissions from Indiana addressing EPA's requirements for its new source review (NSR) and prevention of significant deterioration (PSD) program with respect to particulate matter smaller than 2.5 micrometers (PM_{2.5}) and ozone precursors. This rulemaking will finalize portions of two proposed rulemaking actions, one published in the Federal Register on August 19, 2013 and another published on November 1, 2013.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2012-0567. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michael Langman, Environmental Scientist, at (312) 886-6867 before visiting the Region 5 office.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the Background for This Final Approval?
- II. What is EPA Approving with This Final Action?
- III. Why is EPA Approving Changes to Indiana's Nonattainment New Source Review Program?

IV. Why is EPA Taking No Action on Portions of Indiana's Request?

V. What Action is EPA Taking?

VI. Statutory and Executive Order Reviews.

I. What is the Background for This Final Approval?

On July 12, 2012, the Indiana Department of Environmental Management (IDEM) submitted revisions to Indiana's State Implementation Plan (SIP) intended to address ozone and PM_{2.5} NSR and PSD requirements. IDEM also submitted a supplemental revision to its SIP on December 12, 2012, addressing additional PM_{2.5} NSR and PSD requirements. Indiana's SIP is contained within title 326 of the Indiana Administrative Code (IAC).

On August 19, 2013, EPA proposed to approve some portions of the submissions as revisions to Indiana's SIP (see 78 FR 50360). The public comment period for this proposed approval ended on September 18, 2013. EPA received comments on the August 19, 2013, proposed rulemaking.

On November 1, 2013, EPA proposed to approve additional portions of the submissions as revisions to Indiana's SIP (see 78 FR 65590). The public comment period for the proposed approval ended on December 2, 2013. No comments were received for the November 1, 2013, proposed rulemaking.

In today's rulemaking, EPA finalizes portions of its August 19, 2013, and November 1, 2013, proposed approval of Indiana's July 12, 2012, and December 12, 2012, submissions from IDEM. These were intended to address requirements related to EPA's 2010 final rule entitled "Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs), and Significant Monitoring Concentration (SMC)" (the 2010 NSR Rule)¹ with respect to the major source baseline date, trigger date, definition of baseline area, and the class I variance. EPA will also finalize its approval of portions of IDEM's submission addressing nitrogen oxide (NOx) ozone precursor requirements obligated by EPA's 2005 final rule entitled "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2"².

EPA is also finalizing its approval of some portions of Indiana's submission as it relates to nonattainment NSR. In particular, EPA is approving the revisions to Indiana's SIP intended to address the requirements obligated by EPA's 2008 final rule entitled "Implementation of New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})"

¹ 75 FR 64863 (October 20, 2010).

² 70 FR 71612 (November 29, 2005).

(the 2008 NSR Rule)³ with respect to nonattainment NSR program definitions of "regulated NSR pollutant" and "significant". These definitions were submitted in accordance with title I, part D, subpart 1 of the Clean Air Act (CAA) as opposed to title I, part D, subpart 4 of the CAA.

EPA will be taking no action on the revisions requesting changes to permitting exemptions and Indiana's title V program. EPA will also be taking no action on the revisions incorporating PM_{2.5} PSD increments due to an adverse comment EPA received on the August 19, 2013, proposed rulemaking.

The following sections will describe in more detail the action EPA is taking on each of Indiana's requests.

II. What is EPA Approving with this Final Action?

For the reasons discussed in the November 1, 2013, proposed rulemaking (see 78 FR 65590), EPA is finalizing its approval for the following revisions to Indiana's SIP:

- (i) The corrected SIP citation for ozone ambient air quality data at 326 IAC 2-2-4(b)(2)(A)(vi);
- (ii) The revised requirements allowing the submission of ozone post-approval monitoring data for both volatile organic compounds (VOC) and NO_x at 326 IAC 2-2-4(c)(4);

³ 73 FR 28321 (May 16, 2008).

- (iii) The addition of the $PM_{2.5}$ class I variance at 326 IAC 2-2-14(e); and
- (iv) The revised submission requirements to include $PM_{2.5}$ requirements as part of the petition for alternate opacity limits at 326 IAC 5-1-5(b)(1)(E).

EPA is also finalizing approval of portions of submissions from IDEM intended to address requirements related to the 2010 NSR Rule. On August 19, 2013, EPA published a rulemaking proposing approval of 326 IAC 2-2-1(f)(1), 326 IAC 2-2-1(ee)(3), and 326 IAC 2-2-1(gg)(1)(C) (see 78 FR 50360). This action was independent of the November 1, 2013, proposed rulemaking (see 78 FR 65590), where EPA proposed approval of the identical provisions. Therefore, for the reasons discussed in both the August 19, 2013, and November 1, 2013, proposed rulemakings, EPA is finalizing its approval for the following revisions to Indiana's SIP:

- (i) The revision to the definition of "baseline area" at 326 IAC 2-2-1(f)(1);
- (ii) The revision to the definition of "major source baseline date" at 326 IAC 2-2-1(ee)(3); and
- (iii) The addition of the $PM_{2.5}$ trigger date to the definition of "minor source baseline date" at 326 IAC 2-2-1(gg)(1)(C).

To clarify, today's final approval of 326 IAC 2-2-1(f)(1), 326 IAC 2-2-1(ee)(3), and 326 IAC 2-2-1(gg)(1)(C) serves as a final action for both the August 19, 2013, and November 1, 2013, proposed rulemakings.

III. Why is EPA Approving Changes to Indiana's Nonattainment New Source Review Program?

On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council v. EPA*⁴ issued a decision that remanded the EPA's 2007 and 2008 rules implementing the 1997 PM_{2.5} National Ambient Air Quality Standards (NAAQS). Relevant here, the 2008 NSR Rule promulgated NSR requirements for implementation of PM_{2.5} in both nonattainment areas and attainment/unclassifiable areas. The Court found that EPA erred in implementing the PM_{2.5} NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. The Court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at 437.

On April 25, 2014, the Administrator signed a final rulemaking that begins to address the remand (*see*

⁴ 706 F.3d 428 (D.C. Cir. 2013).

<http://www.epa.gov/airquality/particlepollution/actions.html>).

Upon its effective date, the final rule classifies all existing PM_{2.5} nonattainment areas as "Moderate" nonattainment areas and sets a deadline of December 31, 2014, for states to submit any SIP submissions, including nonattainment NSR SIPs, that may be necessary to satisfy the requirements of subpart 4, part D, title I of the CAA with respect to PM_{2.5} nonattainment areas.

In a separate rulemaking process that will follow the April 2014 rule, EPA is evaluating the requirements of subpart 4 as they pertain to nonattainment NSR for PM_{2.5} emissions. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM₁₀ precursors "except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area." Under the court's decision in *NRDC*, section 189(e) of the CAA also applies to PM_{2.5}.

As discussed in the proposed rulemaking for this action, IDEM's SIP submission included revisions to two definitions in Indiana's nonattainment NSR program. The revised definition of "regulated NSR pollutant" at 326 IAC 2-3-1(mm)(3) identifies precursors to both ozone and PM_{2.5} in nonattainment areas. With respect to PM_{2.5}, the revised definition of "regulated NSR pollutant" at 326 IAC 2-3-1(mm)(3) identifies sulfur dioxide

(SO₂) and NO_x as regulated PM_{2.5} precursors while VOCs and ammonia are not regulated PM_{2.5} precursors in PM_{2.5} nonattainment areas in the state. The revised definition of "significant" at 326 IAC 2-3-1(pp) adds significant emission rates for direct PM_{2.5} and for SO₂ and NO_x as PM_{2.5} precursors. These revisions, although consistent with the 2008 NSR Rule as developed consistent with subpart 1 of the CAA, may not contain the elements necessary to satisfy the CAA requirements when evaluated under the subpart 4 statutory requirements. In particular, Indiana's submission does not include regulation of VOCs and ammonia as PM_{2.5} precursors, nor does it include a demonstration consistent with section 189(e) showing that major sources of those precursor pollutants would not contribute significantly to PM_{2.5} levels exceeding the standard in the area. For these reasons, EPA cannot conclude at this time that this part of Indiana's nonattainment NSR submission satisfies all of the requirements of subpart 4 as they pertain to PM_{2.5} nonattainment NSR permitting.

Although the revisions to Indiana's nonattainment NSR rule may not contain all of the necessary elements to satisfy the CAA requirements when evaluated under the subpart 4 provisions, the revisions themselves represent a strengthening of the currently-approved Indiana SIP which does not address PM_{2.5} at all. As a

result of the April 25, 2014, final rule, IDEM will have until December 31, 2014, to make any additional submission necessary to address the requirements of subpart 4, including addressing the PM_{2.5} precursors of VOC and ammonia. For these reasons, EPA is approving the nonattainment NSR revisions at 326 IAC 2-3-1(mm)(3) and 326 IAC 2-3-1(pp) without listing as a deficiency at this time the absence of either the regulation or evaluation of VOCs and ammonia as PM_{2.5} precursors.

IV. Why is EPA Taking No Action on Portions of Indiana's Request?

EPA is taking no action with respect to the PSD increment revision at 326 IAC 2-2-6(b). In EPA's August 19, 2013 rulemaking, we proposed to approve revisions to Indiana's PSD increment at 326 IAC 2-2-6(b). During the comment period for the August 19, 2013, proposed rulemaking, EPA received an adverse comment regarding the PSD increment revision at 326 IAC 2-2-6(b). In the November 1, 2013, proposed rulemaking, EPA proposed to approve the same revisions to Indiana's PSD increment at 326 IAC 2-2-6(b). EPA did not receive any adverse comments during the comment period for that proposed rulemaking. However, given the earlier adverse comment, EPA is not taking final action with respect to 326 IAC 2-2-6(b) in this action. Instead, EPA will address Indiana's satisfaction of the PSD

increment requirements and address the adverse comment in a separate action.

EPA is also taking no action on the following revisions to Indiana's SIP:

- (i) 326 IAC 2-1.1-3(d)(2)(A);
- (ii) 326 IAC 2-1.1-3(e)(1)(A); and
- (iii) 326 IAC 2-1.1-3(h)(2)(B)(xi).

As discussed in the November 1, 2013, proposal, these revisions to permitting exemptions were requested for state regulations that EPA has not previously approved into Indiana's SIP. If Indiana requests in the future that EPA take action on adding these revisions to Indiana's SIP as part of a separate SIP submission, then EPA will do so at that time.

EPA is taking no action on the following revisions to Indiana's title V program:

- (i) 326 IAC 2-7-1(21)(E)(vi); and
- (ii) 326 IAC 2-7-1(42)(C)(ii)(FF).

As discussed in the November 1, 2013, proposal, EPA will take action on the revisions to Indiana's title V program as part of a title V program submission.

V. What Action is EPA Taking?

For the reasons discussed previously in the proposed rulemaking and in today's final rulemaking, EPA is approving

into the Indiana SIP the following revised rules addressing PM_{2.5} and ozone requirements: 326 IAC 2-2-1(f)(1), (ee)(3), and (gg)(1)(C); 326 IAC 2-2-4(b)(2)(A)(vi) and (c)(4); 326 IAC 2-2-14(e); and 326 IAC 5-1-5(b)(1)(E).

EPA is also approving into the Indiana SIP the following revised rules to Indiana's nonattainment NSR program: 326 IAC 2-3-1(mm)(3) and (pp).

For the reasons identified in the November 1, 2013, proposed rulemaking and further explained in today's final rulemaking, EPA is taking no action with respect to the following revised rules to PM_{2.5} PSD increment, permitting exemptions, and Indiana's title V program: 326 IAC 2-1.1-3(d)(2)(A), (e)(1)(A), and (h)(2)(B)(xi); 326 IAC 2-2-6(b); and 326 IAC 2-7-1(21)(E)(vi) and (42)(C)(ii)(FF).

VI. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that

reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register.

A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Ozone, Particulate matter, Reporting and
recordkeeping requirements, Sulfur oxides, Volatile organic
compounds.

Dated: June 17, 2014.

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.770 the table in paragraph (c) is amended by:

- a. Revising the entries in "Article 2. Permit Review Rules" for "Rule 2. Prevention of Significant Deterioration Requirements";
- b. Revising the entry in "Article 2. Permit Review Rules", "Rule 3. Emission Offset" for 2-3-1 "Definitions"; and
- c. Revising the entries for "Article 5. Opacity Regulations".

The revised text reads as follows:

§ 52.770 Identification of plan.

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(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
* * * * *				
Article 2. Permit Review Rules				
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Rule 2. Prevention of Significant Deterioration (PSD) Requirements				
2-2-1	Definitions	7/11/2012	10/29/2012, 77 FR 65478	(dd) (1), (ff) (7), (ss) (1), (ww) (1) (F), and (ww) (1) (G) only.
		7/11/2012	[INSERT THE DATE OF PUBLICATION IN THE	(f) (1), (ee) (3),

			FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	and (gg) (1) (C) only.
2-2-2	Applicability	10/31/2010	7/8/2011, 76 FR 40242	
2-2-3	Control technology review; requirements	9/10/2004	6/18/2007, 72 FR 33395	
2-2-4	Air quality analysis; requirements	7/11/2012	10/29/2012, 77 FR 65478	(b) (2) (vi) only.
		7/11/2012	[INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	(c) (4) only.
2-2-5	Air quality impact; requirements	10/31/2010	7/8/2011, 76 FR 40242	
2-2-6	Increment consumption; requirements	9/10/2004	6/18/2007, 72 FR 33395	
2-2-8	Source obligation	10/31/2010	7/8/2011, 76 FR 40242	
2-2-10	Source information	10/31/2010	7/8/2011, 76 FR 40242	
2-2-11	Stack height provisions	4/22/2001	6/27/2003, 68 FR 38197	
2-2-12	Permit rescission	4/8/2004	5/20/2004, 69 FR 29071	
2-2-13	Area designation and redesignation	4/22/2001	6/27/2003, 68 FR 38197	
2-2-14	Sources impacting federal Class I areas: additional requirements	7/11/2012	[INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
2-2-15	Public participation	4/22/2001	6/27/2003, 68 FR 38197	
2-2-16	Ambient air ceilings	4/22/2001	6/27/2003, 68 FR 38197	
Rule 3. Emission Offset				
2-3-1	Definitions	10/31/2010	7/8/2011, 76 FR 40242	
		7/11/2012	[INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
* * * * *				
Article 5. Opacity Regulations				
Rule 1. Opacity Limitations				
5-1-1	Applicability	11/8/1998	7/16/2002, 67 FR 46589	
5-1-2	Opacity limitations	11/8/1998	7/16/2002, 67 FR 46589	
5-1-3	Temporary alternative opacity limitations	11/8/1998	7/16/2002, 67 FR 46589	
5-1-4	Compliance determination	6/11/1993	6/15/1995, 60 FR 31412	Sec. 4 (a)
		11/8/1998	7/16/2002, 67 FR 46589	Sec. 4 (b)
5-1-5	Violations	6/11/1993	6/15/1995, 60 FR 31412	Sec. 5 (a) , 5 (c)
		11/8/1998	7/16/2002, 67 FR 46589	Sec. 5 (b)
		7/11/2012	[INSERT THE DATE OF PUBLICATION IN THE	Sec. 5 (b) (1) (E)

			FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	only.
5-1-7	State implementation plan revisions	6/11/1993	6/15/1995, 60 FR 31412	
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[FR Doc. 2014-15271 Filed 07/01/2014 at 8:45 am; Publication
Date: 07/02/2014]